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examination he says that "Wigram's distinction between 'explanatory evidence' and 'evidence of intention' cannot be supported, and that Mr. Hawkins and others are more correct in considering all extrinsic facts tendered in aid of interpretation to be, in effect, evidence of intention, circumstantial or direct. With regard, however, to the general rule of each writer, it is clear that since the admission of extrinsic evidence is determined by a variety of principles . . . it would be well-nigh impossible to devise any simple general rule . . . which could be made to do the work of all possible special ones." The author then points out that Wigram's explanatory evidence is not "always admissible," nor his evidence of intention "always inadmissible," and that Hawkins's view that circumstantial evidence of intention is invariably admissible cannot be sustained.

Mr. Phipson declares that in reducing the various rules and principles to seven working propositions, Wigram seems to have done all that is possible to secure condensation without sacrificing adequacy or exactness. Examining these propositions in detail, Mr. Phipson upholds the second, that primary meanings must if sensible inflexibly prevail, against Professor Thayer's doctrine that if relevant facts favor a secondary meaning that may be adopted. Proposition III is declared correct if properly read with the others, provided it means "the clear modern rule that after proof of an object or objects substantially though incorrectly answering the description, further evidence, *e. g.*, of treatment, dealing, and habits of speech, although not of course of direct declarations, is admissible to show that the testator in fact intended to refer to the object alleged." Except for the "now untenable proposition that 'no fact can be material which is not coincident in point of time with the making of the will,'" Proposition V is sustained. Though Proposition VII, as to equivocation, is not criticised, Hawkins's objection to Wigram's reasons for the admission of declarations of intention is considered strong, when he says that thus defining what is indefinite is making "a material addition to the will," and that it is only an historical anomaly that such evidence is not admissible generally. Mr. Justice Holmes's rejoinder in the HARVARD LAW REVIEW, Vol. XII. pp. 418, 419, is held not to meet these strictures satisfactorily. Subject to these modifications, Mr. Phipson finds in the Propositions the true value of Wigram's work, and declares they appear still to embody the most accurate and exhaustive statement of the law on the present topic.

A BRIEF HISTORY OF THE PAROL EVIDENCE RULE. — The interesting and valuable results of an original investigation into the sources and development of the rule by which the written memorandum of a transaction is declared to be conclusive as to its terms, is contained in a recent article by Professor Wigmore of the Northwestern University Law School. *A Brief History of the Parol Evidence Rule*, 4 Columbia L. Rev. 338 (May, 1904). The doctrine was unknown to the Germanic invaders of Rome and Western Europe. A general ignorance of letters and the existence of a "legal system of formal oral transactions" combined to strip the *carta*, or document of that period, of further value than as a means of effecting a formal symbolic delivery of land, and of preserving the names of witnesses upon whom alone reliance was placed for proof of the terms of the transaction. A notable advance in the status of written documents appeared with the rise of the seal. The principle that the king's word is indisputable gained for a document bearing his seal incontestability. As the use of the seal came to be extended to all persons, it carried with it the same attributes until, by the thirteenth century, the incontestability of sealed instruments was complete. Consequently the office of witnesses as vouchers for the terms of the original transaction receded into unimportance. But ignorance, coupled with the fact that all transactions affecting land were still practised with oral forms, prevented writings from becoming more than an alternative kind of proof. However, mercantile custom had already led the advance, and a tendency to become lettered had brought with

it an appreciation of the trustworthiness of writing as against the "shiftiness of mere testimonial recollection." So a growing unwillingness of the judges to admit to the jury oral transactions calculated to overturn the words of the writing made for the new principle. Meanwhile the theory of the rule was undergoing a transition. At first the idea prevailed that he who has sealed a document is estopped from proving the terms of the transaction by witnesses. But more important was the theory of the inferiority of certain writings to others, which involved the notion that the sealed instrument discharged or replaced all others. Mr. Wigmore then explains how, with this preparation, the beginning of the final advance to the modern idea was marked by the Statute of Frauds and Perjuries. This legislation, by abolishing the practice of creating freehold estates by oral livery of seisin only, and the necessity of the seal in the case of leases, emphasized the constitutive nature of the document and extended the conception to all writings. This idea was followed in other transactions not affected by the statute, and the modern view came into complete existence. In conclusion Mr. Wigmore points out that the principle of the indisputability of the king's word as embodied in his sealed document led to the conception that the written records of his court were incontestable as well; so that the "notion of a constitutive writing is now extended to include the record of a judicial proceeding."

ACTIONS FOR MALICIOUS PROSECUTION. *Silas Alward.* Considering chiefly the question how far defendant's obtaining opinion of counsel is to be considered probable cause. 40 Can. L. J. 296.

ACTS IN EMERGENCIES AS CONSTITUTING CONTRIBUTORY NEGLIGENCE. *Glenda Burke Slaymaker.* 58 Cent. L. J. 463.

AMERICA'S CONTRIBUTION TO THE LITERATURE OF INTERNATIONAL LAW AND DIPLOMACY. *John W. Foster.* 13 Yale L. J. 409.

ASPECTS OF THE MEANING OF THE WORD "CONCURRENT" IN USE WITH FIRE INSURANCE POLICIES, SOME. *M. C. Phillips.* Brief examination of the few cases in point. 59 Cent. L. J. 62.

BABYLONIAN LAW. *Ross G. Murison.* A brief outline of the Code of Hammurabi. 3 Can. L. Rev. 439.

BRIBES TO AGENTS. *Anon.* Commenting adversely on a recent Ontario case. 40 Can. L. J. 489.

BRIEF HISTORY OF THE PAROL EVIDENCE RULE, A. *John H. Wigmore.* 4 Columbia L. Rev. 338. See *supra.*

CANCELLATION OF A FIRE INSURANCE POLICY, THE. *M. C. Phillips.* 59 Cent. L. J. 123.

CASE OF PENTAL ISLAND, THE. *W. Harrison Moore.* Discussing the boundary dispute between Victoria and New South Wales. 20 L. Quar. Rev. 236.

CHRISTIAN SCIENCE AND THE LAW. *Irving E. Campbell.* 10 Va. L. Reg. 285.

CIVIL CODE OF LOUISIANA AS A DEMOCRATIC INSTITUTION, THE. *Charles E. Fenner.* Comparing the Louisiana code with uncodified common law and arguing for the superiority of the former. 12 Am Law. 331.

CONFLICTING OPINIONS IN THE MERGER CASE, THE. *Bruce Wyman.* 16 Green Bag 298.

CONSOLIDATIONS OR TRUSTS. *Theodore D. Gottlieb.* An outline summary of the origin, growth, and development of corporations, with a review of the first attempts towards trust consolidation. 27 N. J. L. J. 165.

CONSTITUTIONAL LAW OF THE UNITED STATES AS MOULDED BY DANIEL WEBSTER. *Everett P. Wheeler.* 13 Yale L. J. 366.

CORPORATIONS OF TWO STATES. *Joseph Henry Beale, Jr.* 4 Columbia L. Rev. 392.

CRITICAL ANALYSIS OF THE LAW AS TO MISTAKE IN ITS EFFECT UPON CONTRACTS. *Truman Post Young.* 38 Am. L. Rev. 334.

CROWN AS REPRESENTING THE STATE, THE. *P. Cobbett.* Pointing out difficulties in Australian law arising from failure to recognise the State as a legal person and from the attempt to make the King serve that purpose. 1 Commonwealth L. Rev. 145.

DELIVERY OF POLICY AS CONDITION PRECEDENT TO COMPLETE CONTRACT OF INSURANCE. *Guilford A. Deitch.* Consisting principally of quotations from decisions. 59 Cent. L. J. 28.

DEPOSIT OR BAILMENT IN A CLOTHING ESTABLISHMENT. *Nathan Newmark.* 58 Cent. L. J. 405.

DIFFERENCES BETWEEN ENGLISH AND COLONIAL LAW, SOME. *Everard Digby.* Contrasting law of England with that of New South Wales. 29 L. Mag. & Rev. 294.

DOMESTIC SERVANTS. *Geo. S. Holmested.* Discussing how far English law that a general hiring is for a year terminable at a month's notice is applicable in Canada. 24 Can. L. T. 125.

ENFORCEMENT ABROAD OF STOCKHOLDERS' OR DIRECTORS' LIABILITY, THE. *Joseph Henry Beale, Jr.* 16 Green Bag 387.

ENGLISH HISTORY AND THE STUDY OF ENGLISH LAW. *Arthur Lyon Cross.* Indicating the importance of the study of English History to a scholarly knowledge of the common law. 2 Mich. L. Rev. 649.

EQUITABLE DOCTRINE OF MARSHALLING ASSETS OF DECEDENT'S ESTATE FOR PAYMENT OF DEBTS. *C. B. Garnett.* 10 Va. L. Reg. 175.

EQUITABLE MORTGAGES. *A. H. Marsh.* 24 Can. L. T. 134.

EVOLUTION OF THE "PUB" — A SKETCH OF THE EARLIER HISTORY OF THE LICENSING LAWS. *H. J. Randall.* 20 L. Quar. Rev. 316.

EXTRINSIC EVIDENCE IN AID OF INTERPRETATION. *Sidney L. Phipson.* 20 L. Quar. Rev. 245. See *supra.*

FISHERMEN AND THE LAW. *John J. O'Connor.* Pointing out differences between the law as applied to fishermen and as applied to other seamen. 16 Green Bag 582.

FORMER JEOPARDY. *O. B. Harvey.* Distinguishing the plea of former jeopardy, using the word in its strict sense, from that of former acquittal or conviction. 10 Va. L. Reg. 410.

FRAUDULENT PREFERENCES. *A. Rives Hall.* An exposition of Quebec law on the subject. 3 Can. L. Rev. 290.

FREE SPEECH AND FREE PRESS IN RELATION TO THE POLICE POWER OF THE STATE. *P. L. Edwards.* Arguing that statutes prohibiting publication of criminal news are constitutional. 58 Cent. L. J. 383.

FUTURE INTERESTS IN LAND. *Edward Jenks.* An attempt "to restate, in short and simple form, the doctrine of future interests in land, as it results from modern English law." 20 L. Quar. Rev. 280.

FUTURE OF INTERNATIONAL LAW, THE. *Allen E. Rogers.* 16 Green Bag 322.

HOW JUDGMENTS ARE AFFECTED BY THE "FULL FAITH AND CREDIT" SECTION OF THE UNITED STATES CONSTITUTION AND THE ACTS OF CONGRESS OF MAY 26, 1790, AND MARCH 27, 1804. *Geo. P. Costigan, Jr.* Pointing out likenesses and differences between strictly foreign judgments and judgments of sister States. 38 Am. L. Rev. 350.

ILLOGICAL TREND IN RES ADJUDICATA, AN. *Sam'l C. Williams.* A protest against the English view that two separate actions may be maintained for injury to person and to property from the same wrongful act. 59 Cent. L. J. 244.

IMPEACHMENT OF WITNESSES. *Wm. Trickett.* Discussing Pennsylvania law. 8 Forum (Dickinson) 245.

IMPEACHMENT OF WITNESSES BY PROOF OF SPECIFIC WRONGFUL ACTS. *James A. Yantis.* An elaborate article with full citation of authority. 59 Cent. L. J. 143, 164, 184.

IMPRACTICABLE COMPANIES ACT, 1900, THE. *Anthony Pulbrook.* 29 L. Mag. & Rev. 302.

INAPPLICABILITY OF DECISIONS UNDER THE BRITISH NORTH AMERICA ACT TO CASES ARISING UNDER THE CONSTITUTION OF THE COMMONWEALTH, THE. *A. Inglis Clark.* 1 Commonwealth L. Rev. 193.

INTERNATIONAL LAW IN LEGAL EDUCATION. *James B. Scott.* 4 Columbia L. Rev. 409.

INTER-STATE SERVICE OF PROCESS. *Paris Nesbit.* Discussing provisions of the federal constitution of Australia. 1 Commonwealth L. Rev. 203.

IRREGULAR ASSOCIATIONS. *George Wharton Pepper.* A preliminary study for a chapter on the Law of Association which the writer has in course of preparation. 52 Am. L. Reg. 409, 504, 576.

IS THE JUDGMENT OF THE DIRECTORS OF BUSINESS CORPORATIONS CONCLUSIVE IN DETERMINING THE VALUE OF PROPERTY TAKEN IN PAYMENT OF ITS STOCK? *Henry P. Molloy.* 66 Albany L. J. 207.

IS THIS RIGHT? *Donald Macmaster.* A plea for reform in practice in bringing appeals to the Privy Council. 3 Can. L. Rev. 355.

JUDICIAL CONSTITUTIONAL AMENDMENT AS ILLUSTRATED BY THE DEVOLUTION OF THE INSTITUTION OF THE JURY FROM A FUNDAMENTAL RIGHT TO A MERE METHOD OF PROCEDURE. *Frederic R. Coudert.* 13 Yale L. J. 331.

JUDICIAL HISTORY OF INDIVIDUAL LIBERTY, THE. V.-IX. *Van Vechten Veeder.* 16 Green Bag 317, 395, 471, 529, 591.

JUDICIAL POWER OF THE COMMONWEALTH, THE. *T. R. Barin.* Discussing provisions of the Constitution of Australia. 1 Commonwealth L. Rev. 97.

LABOR STRIKES AND INJUNCTIONS. *P. L. Edwards.* 59 Cent. L. J. 23.

"LAST CLEAR CHANCE." *Thomas W. Shelton.* 10 Va. L. Reg. 301.

LAW APPLICABLE TO THE USE OF ELECTRICITY IN MODERN INDUSTRIAL LIFE. *Helm Bruce.* 12 Am. Law. 290, 337.

LAW OF DAMDUPAT, THE. *J. R. Gharpure.* Discussing the rule of Hindu Law that "interest exceeding the principal sum lent can never be recovered at any one time." 6 Bombay L. Rep 129.

LAW RELATING TO DEPOSITS RECEIVED BY INSOLVENT BANKS, THE. *Albert S. Bolles.* 52 Am. L. Reg. 438.

LEGAL ASPECTS OF THE PANAMA QUESTION. *Roland Crangle.* 12 Am. Law. 214, 251.

LEGAL FRAUD. *Silas Alward.* Discussing the origin and meaning of the term in the light of judicial decisions. 24 Can. L. T. 225.

LEGAL MONOPOLY. *Alton D. Adams.* Discussing the "trust" problem from the contract side. 19 Pol. Sci. Quar. 173.

LEGISLATION OF THE SESSION, THE. *Anon.* A summary of the work of Parliament during the last session. 117 L. T. 451.

LIABILITY OF A MANUFACTURER OR A VENDOR TO PERSONS WITH WHOM HE HAS NO CONTRACTUAL RELATIONS FOR NEGLIGENCE IN THE CONSTRUCTION OR SALE OF CHATTELS. *Charles Loring.* 58 Cent. L. J. 365.

LIABILITY OF AN EMPLOYER FOR THE TORTS OF AN INDEPENDENT CONTRACTOR. PART I. *C. B. Labatt.* A monograph covering one hundred and forty pages treating cases in which liability is not imputed to the employer. 40 Can. L. J. 529.

LIABILITY OF TELEGRAPH COMPANIES FOR NEGLIGENCE IN THE TRANSMISSION AND DELIVERY OF MESSAGES. *Graham B. Smedley.* 10 Va. L. Reg. 392.

MARRIED WOMEN BEFORE THE LAW IN NORTH CAROLINA. *Thomas Ruffin.* 1 North Carolina J. of L. 230.

MERGER DECISION, THE. *John S. Wise.* Supporting the decision. 8 L. Notes (N. Y.) 325.

MODIFICATIONS OF THE JURY SYSTEM. *John Burton Phillips.* Advocating abolition of unit rule in civil cases. 16 Green Bag 514.

MURRAY RIVER BOUNDARY, THE. *W. H. Moore.* 1 Commonwealth L. Rev. 157.

NATIONAL CONTROL OF THE POLLUTION OF PUBLIC WATERWAYS. *Charles Claflin Allen.* Arguing in support of the decision of the U. S. Supreme Court in the recent case of Missouri *v.* Illinois. 38 Am. L. Rev. 321.

NATURE AND INTERRELATION OF SOVEREIGN STATES. *Eugene Stevenson.* 38 Am. L. Rev. 551.

NEGRO BEFORE THE SUPREME COURT, THE. *B. Frank Dake.* An examination of all the cases before the Supreme Court in which the political or civil status of the negro has been involved. 66 Albany L. J. 238.

NEURASTHENIA, THE RESULT OF NERVOUS SHOCK, AS A GROUND FOR DAMAGES. *Flora V. Woodward Tibbits.* A medico-legal treatment of the subject, favoring recovery. 59 Cent. L. J. 83.

NEW YORK CODE OF EVIDENCE, A. III. *David Dudley Field* and *William Rumsey.* 5 Brief 119.

NONSUIT. *Walter H. Trueman.* Discussing the general law and practice on the subject. 24 Can. L. T. 165.

NORTHERN SECURITIES DECISION, THE. *George F. Canfield.* An elaborate adverse comment. 4 Columbia L. Rev. 315.

NORTHERN SECURITIES DECISION, THE. A REVIEW. *Henry Wolf Biklé.* 52 Am. L. Reg. 358.

NOTE ON REX *v.* BAMFORD. *Everard Digby.* Discussing law in force in land ceded to the Commonwealth of Australia by New South Wales before laws were passed by Commonwealth. 1 Commonwealth L. Rev. 106.

NOTEWORTHY DECISIONS OF THE JUDICIAL YEAR. *Anon.* A résumé of English decisions. 117 L. T. 379, 405, 427.

ONE PHASE OF FEDERAL POWER UNDER THE COMMERCE CLAUSE OF THE CONSTITUTION. *John C. Donnelly.* Discussing Scranton *v.* Wheeler, 179 U. S. 141, as to the rights of riparian owners on navigable rivers as affected by the Commerce Clause. 2 Mich. L. Rev. 670.

PANAMA SITUATION IN THE LIGHT OF INTERNATIONAL LAW, THE. *William Cullen Dennis.* 52 Am. L. Reg. 265.

PARRICIDE AND JUSTICE, THE. AN HISTORICAL SKETCH. *Charles Green Cumston.* 16 Green Bag 578.

PENAL CONSEQUENCES OF BANKRUPTCY UNDER THE BANKRUPTCY LAWS OF ENGLAND AND THE UNITED STATES. *E. W. Hansell.* 12 Jour. Soc. Comp. Leg. 271.

PHYSICIAN AS AN EXPERT, THE. II. *H. B. Hutchins.* 2 Mich. L. Rev. 687.

POWER OF THE LEGISLATURE TO ABOLISH A RULE OF EQUITABLE PROCEDURE BY ENACTING A REMEDY AT LAW, WHERE NO PROHIBITORY WORDS ARE USED IN SUCH ENACTMENT. *T. A. Sherwood.* Discussing a Missouri statute and decisions thereunder. 59 Cent. L. J. 44.

PRESENT COMPLEXITY OF LAND LAW AND ITS REMEDY, THE. *J. E. Hogg.* 20 L. Quar. Rev. 292.

PROFESSIONAL RELATIONS OF THE LAWYER TO THE CLIENT, TO THE COURT AND TO THE COMMUNITY, THE. I. *Henry Wynans Jessup.* Discussing the subject in the light of New York statutes. 5 Brief 145.

PROPOSED AMENDMENTS TO THE SUPREME COURT ACT. *E. R. Cameron.* 3 Can. L. Rev. 377, 403.

PROPRIETY OF DIRECT EVIDENCE OF INTENTION. *Colin P. Campbell.* 58 Cent. L. J. 445.

PROVABILITY OF TORT-CLAIMS IN BANKRUPTCY. *Stanley Folz.* 52 Am. L. Reg. 473.

QUESTIONS OF INTERNATIONAL LAW ARISING FROM THE RUSSO-JAPANESE WAR. I–V. *Amos S. Hershey.* 16 Green Bag 306, 375, 452, 538, 595.

RECENT CASE OF TREASURE TROVE, THE. *Robert Munro.* Commenting upon Attorney-General *v.* Trustees of British Museum, 19 Times L. Rep. 555. 59 Cent. L. J 65.

RECENT DECISIONS UPON THE MONEY-LENDER'S ACT. *Hugh H. L. Bellot.* Maintaining they have made the act nugatory. 29 L. Mag. & Rev. 315.

REFORM IN CRIMINAL PROCEDURE. *Everett P. Wheeler.* 4 Columbia L. Rev. 356.

RESPONSIBILITY OF A CHILD FOR ITS TORTS OR WRONGS, THE. *Theodore Sutro.* 38 Am. L. Rev. 371.

RIGHT OF THE SUBJECT TO PERSONAL LIBERTY IN ENGLISH LAW, THE. *S. P. J. Merlin.* Tracing the growth of the right. 29 L. Mag. & Rev. 266.

RIGHT TO LIGHT, THE. *Charles Thwaites.* 26 L. Stud. J. 127.

RIGHTS AND LIABILITIES OF INFANTS, THE. *Hugh Pettitt.* 26 L. Stud. J. 143.

RULE FORBIDDING SUITS AGAINST RECEIVERS WITHOUT LEAVE, AS APPLIED TO RECEIVERS MANAGING RAILROAD AND LIKE CORPORATIONS, THE. *W. A. Coutts.* A protest against the injustice worked by the rule and its tendency to despotism. 38 Am. L. Rev. 516.

SHOULD THERE BE FREEDOM OF CONTRACT? *Clarence D. Ashley.* Arguing that the courts rightly restrict freedom of contract in certain cases. 4 Columbia L. Rev. 423.

STATUTES OF ONTARIO, THE. 1904. *N. W. Hoyles.* 24 Can. L. T. 251.

SUICIDAL DECLARATIONS IN HOMICIDE CASES. *G. M. Dahl.* 59 Cent. L. J. 103.

SWEDISH LAW REFORM. *Seymour D. Thompson.* A review of a recent work by a Swedish author. 38 Am. L. Rev. 388.

TEST BY WHICH TO DETERMINE WHETHER THE CASE IS FOR THE JURY, THE. *Colin P. Campbell.* 59 Cent. L. J. 224.

"THIEVES" IN RELATION TO A POLICY OF MARINE INSURANCE. *H. Birch Sharpe.* 20 L. Quar. Rev. 300.

TRIAL BY JURY AND "DOUBLE JEOPARDY" IN THE PHILIPPINES. *Libbens R. Wilfley.* A paper called forth by three recent cases before the Supreme Court. 13 Yale L. J. 421.

VALIDITY OF LEGISLATION LIMITING HOURS OF LABOR. *Anon.* Attacking the constitutionality of "eight hour" laws. 58 Cent. L. J. 361.

VIRGINIA STATE. CORPORATION COMMISSION, THE. *A. Caperton Braxton.* Showing the need for such an institution having judicial and executive as well as legislative functions. 38 Am. L. Rev. 481; 10 Va. L. Reg. 1.

WAGERING CONTRACTS *Krishnalal Mohaulal Jhaveri.* Discussing the Indian law on the subject. 6 Bombay L. Rep. 153.

WHEN AND IN WHAT CASES MAY THE OWNER OF ANIMALS WHICH ARE NATURALLY TAME BE LIABLE FOR THEIR MISCHIEVOUS OR WRONGFUL ACTS? *Walter J. Lotz.* 59 Cent. L. J. 204.

WHEN AND IN WHAT CASES WILL A REPRESENTATION AS TO THE VALUE OF REAL OR PERSONAL PROPERTY BE SUFFICIENT TO PREDICATE AN ACTION FOR FRAUD? *Walter J. Lotz.* 58 Cent. L. J. 484.